IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

IN RE:	§	CASE NO. 21-30923-11
	§	HOUSTON, TEXAS
GRIDDY ENERGY, LLC,	§	THURSDAY,
ET AL,	§	APRIL 29, 2021
DEBTORS.	§	8:59 A.M. TO 10:38 A.M.

STATUS CONFERENCE/MOTION HEARING (VIA ZOOM)

-- -- -- -- -- AND -- -- -- -- --

LISA SANDIFER KHOURY	§	CASE NO. 21-3041-ADV
	§	HOUSTON, TEXAS
VERSUS	§	THURSDAY,
	§	APRIL 29, 2021
GRIDDY ENERGY, LLC	§	8:59 A.M. TO 10:38 A.M.

MOTION HEARING (VIA ZOOM)

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: (SEE NEXT PAGE)

(Recorded via CourtSpeak; No log notes)

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(Please also see Electronic Appearances.)

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HOUSTON, TEXAS; THURSDAY, APRIL 29, 2021; 8:48 A.M.

THE COURT: All right. Good morning. We're here in the Griddy Energy case. It is Case 21-30923.

We also are here on a related adversary proceeding, which is Khoury versus Griddy, 21-3041.

Appearances have been made electronically. If there's anyone that wishes to appear that hasn't yet made an electronic appearance, let me ask you to go onto our website, get that done this morning, but we'll go ahead and proceed with the hearing.

I think what we'll do is start this morning with a report -- a status report from Debtor's counsel and they can then let us know where we are. So if I can get lead counsel for Debtor, who wants to give us that status report to please press five star on your phone.

MS. SPIGEL: Good morning. Robin Spigel, Baker Botts, counsel for the Debtor. Thank you for your time today, we appreciate it. There are three items on the agenda today: the Debtor's Motion to conditionally approve its Disclosure Statement for its proposed Second Amended Plan, and the approval of the voting and other confirmation procedures. There's a motion -- there's the Debtor's Motion to Quash and for a protection order and a motion for entry of an order authorizing ordinary course professionals.

Related to the -- just a quick update, since we

were here last, which was on April 1st, regarding the appointment of a committee, the US Trustee appointed unsecured creditors' committee late on March 31st and as Your Honor know, three former customers were appointed to the Committee.

On April 6th, the Committee hired McDermott Will and Emery as their counsel.

And on April 16th, the Debtor learned that the company had also hired a financial advisor, Province. Those retention applications are filed on April 26th.

On April 8th, the Debtor had sent the proposed former customer Bar Date Order and related notice that we had fully negotiated with the Attorney General's Office to the Committee. We haven't received full comments yet from the Committee but we hope to be in a position to submit that Order to the Court next week. I suppose if we can't resolve all issues that we have we can put it on for hearing but I'm hopeful that we can get to a consensual place.

There have been a bunch of second day motions that we have consensually resolved with parties-in-interest including the Committee and the U.S. Trustee and those Orders have been entered.

Unless Your Honor has any questions related to what I've just talked about, I can move on to the first item on the agenda.

THE COURT: I'll see if anybody else wants to make any kind of an opening status report as well and then we'll come back to you for the first item on the agenda.

From 214-295-8063, who do we have on the phone?

MR. GIBBS: Your Honor, good morning.

This is Chuck Gibbs from McDermott Will and Emery. With me is my partner, Darren Azman. I wasn't necessarily raising my hand to speak with respect to your request for status updates, but just to make sure my line was open as we moved into the agenda, but I'm happy to address any questions the Court might have at this time with me.

THE COURT: Mr. Gibbs, thank you and good morning to you.

MR. GIBBS: Good morning.

THE COURT: Is there anyone that wishes to make any sort of status report? Otherwise I'll go back and let Ms. Spiegel move through her agenda.

(No verbal response.)

THE COURT: All right. Ms. Spiegel?

MS. SPIGEL: Thank you, Your Honor. The first item on the agenda is the Debtor's Disclosure Statement Motion. That's at Docket No. 24. The Debtor originally filed a proposed plan and related disclosure statement on the petition date, which is March 15th. Those documents can

be found at Docket No. 22 and 23.

On April 19th, an amended plan and disclosure statement was filed with the Court that among other things contained additional compromise and settlements related to former customers. Those documents can be found at Docket Nos. 175 and 176.

On April 27th, the Debtor filed a further amended plan and related disclosure statement that attempted to address certain of the objections that were filed by the Committee and ERCOT to the Disclosure Statement. Redlines marked against both the April 27th Disclosure Statement and Plan as well as the original Plan were filed with the Court on April 27th and those can be found at Docket No. 213 for the Disclosure Statement and 212 for the Plan.

With respect to the Disclosure Statement, as I noted, the Creditors' Committee and ERCOT each timely filed objections and Ms. Karen Prescott, an alleged tort claimant, filed a late objection on the evening of April 26th.

I would like to note that the Committee filed a motion to seal related to its objection.

The Debtor files a reply to the objection at Docket No. 215 and the Debtor also filed a motion to seal.

With respect to the UCC objection, we've stipulated with each other that each of our exhibits can be moved into evidence solely for the purposes of today's

hearing. I just want to be clear because (indiscernible) agreed with ERCOT, we are not going to seek to move in the Mr. Fallquist's, the CEO, First Day Declaration that was listed on our -- the Debtor's witness and exhibit list.

THE COURT: So let me -- before we get too far, I reviewed those documents and really saw no reason to seal them. I was assuming that the Committee's objection was sealed because it relied on discovery and that discovery might have been a seal kind of an issue rather than really having anything in there that mattered. I don't want to over-seal documents.

Mr. Gibbs, is there something that you need sealed? And if, in fact, you've done it for the somewhat procedural reason that I've identified, I want to find out from I guess whoever produced the documents, which I would assume would be the Debtor, whether there's a reason, in fact, to seal your objection.

MR. GIBBS: Thank you, Your Honor. Again for the Record, Chuck Gibbs with McDermott Will and Emery, counsel for -- proposed counsel for the Official Unsecured Creditors' Committee. We filed that Motion for Seal for exactly the reason you articulated. It was because information -- that certain of the information in our Objection and in the exhibits were provided to us by the Debtor pursuant to a protective order that's been discussed

and also provided to us under professional eyes only.

THE COURT: Right.

MR. GIBBS: So we didn't want to be in violation of any agreements or any court order to that effect.

And there are a couple of either emails or documents that were contained within the exhibits that had potential information regarding valuation of certain of the Debtor's assets that we thought may not be in the best interest of the Debtor and its creditors to have in the public domain should those assets be later marketed for sale, for that reason only.

THE COURT: So I actually looked at the unsealed version and I haven't looked to see what all you did seal.

Where is the sealed document filed? And I just want to be sure we're not over-sealing? I don't want -- nothing in your Objection raises --

MR. GIBBS: Your Honor, if I could --

THE COURT: -- anything of that nature and I'm concerned people will think that we're sealing something because it's got some major hidden secrets and that's just not what's going on here and I want to be as open as we can about the case so.

MR. GIBBS: We agree with that. And I'm scrambling to find the docket number for the sealed version and I'll ask either my partner, Darren Azman, or my

colleague, Darren Yang (phonetic), to chime in with the Court's permission to provide that information at this time.

THE COURT: That'd be great if one of them could tell me what -- or we can come back to this, but what I don't want to do is to over-seal.

Ms. Spiegel, other than the few items that Mr. Gibbs is mentioning that might be in the valuation issue in the attachments, for the body of the Objection, was there anything in there that was of great concern to you all? And again, I don't have a problem that people are going through this, tried to produce stuff quickly and so you all have confidentiality agreements. I think I've even approved all those for you. I just don't want to now result in sealing that gives the wrong impressions whatsoever.

MS. SPIGEL: There is -- in the body of the Committee's Objection, is that what you were asking about --

THE COURT: Yes.

MS. SPIGEL: -- in particular?

THE COURT: Yes.

MS. SPIGEL: Okay. There is some sensitive business information in the objection, but we actually -- the Debtor in our reply didn't -- some of the information that they sealed, we don't have sealed in our reply.

THE COURT: You sealed very -- I did find your sealed version and you sealed like three numbers. I didn't

have a problem with that in yours. It was more theirs that I didn't really see the redactions on theirs.

MS. SPIGEL: Yes.

THE COURT: Can I get this -- instead of me signing sealing orders today, which aren't urgent, if can get you all to now look at those documents and file them with as little redaction as you think is appropriate and then let me review those? I don't need to go through that in detail today, Mr. Gibbs, we can proceed with the hearing.

MR. GIBBS: Okay.

THE COURT: But I'm largely not going to be over-sealing is the message I want to give. And again I just had zero problem that in the rush of producing things, people do these confidentiality agreements. They're important to do. You need to respect them. And now I want to try and back off of that a bit and get stuff out in the public record where things look pretty normal in these objections.

I'm not saying that there aren't objections that may be very meritorious and I don't want you to read me wrong, Mr. Gibbs, but there's wasn't anything in there that was secret or (indiscernible) or anything of that nature.

MR. GIBBS: We agree with that.

THE COURT: So let's move ahead then. And I'm sorry to take you all on that diversion but important I think.

MS. SPIGEL: And I appreciate it. I do want to say that we appreciate the Committee -- I hear what Your Honor's saying and I just want to say for the Record we appreciate the Committee filing under seal because we did provide it confidentially to them, but we are happy to work with them so that it would be -- we'll just work with them to figure out the minimal amount that we think needs to be unsealed.

I will note that there are documents attached to the Committee's witness list that do contain sensitive information, business information that we were going to seal but we can -- we'll work it out with them and then present something to Your Honor.

THE COURT: Thank you.

So did you all want to pre-admit exhibits now or do you want to offer them during the course of the hearing?

MS. SPIGEL: I'm fine offering --

MR. GIBBS: Your Honor, I'd appreciate it if we can admit them now but it's the Debtor's Motion.

MS. SPIGEL: That's fine.

MR. GIBBS: I will do it any way the Debtor would like, that's fine.

THE COURT: Ms. Spiegel?

MS. SPIGEL: We could pre-admit them. Yeah, no, we can pre-admit them. I may need my partner,

John Lawrence, who's also on the line. I may need him to weigh in. We are only going to admit -- seek to admit two exhibits into evidence.

THE COURT: All right. Well, let me get -- is it Mr. Newcomb? Mr. Newcomb I think filed it. Is he the one that's going to know that or someone else?

MS. SPIGEL: I think I can do it although Mr. Newcomb can correct me if I do it wrong.

(Laughter.)

THE COURT: All right.

MS. SPIGEL: Okay. Thank you, Your Honor.

THE COURT: Mr. Newcomb, why don't you press five star just so that you can come step on Ms. Spiegel's toes if that's appropriate? Get your line activated.

MS. SPIGEL: Thank you, Your Honor. Okay. On the witness and exhibit list, we listed as No. 2 the Declaration of Mr. Fallquist in support of our reply, the Debtor's reply and we'd like to offer that into evidence.

THE COURT: So 218-2 is offered.

And what else are you offering?

MS. SPIGEL: We'd like to offer the three-month cash flow, which is 218-3 or No. 3.

THE COURT: Is there any objection to 218-2 and 218-3 being admitted as substantive evidence at today's hearing?

(No verbal response.)

THE COURT: All right. 218-2 and 218-3 are each admitted.

(Debtor's Exhibit Nos. 218-2 and 218-3 received as evidence.)

THE COURT: Do the opposing parties have exhibits that they wish to introduce? And I know this may go beyond the Committee.

(No verbal response.)

THE COURT: Mr. Gibbs, if you said something, I couldn't hear you.

MR. GIBBS: No I did not. I thought you were asking for request for evidence from any other opposing party besides us so I was just --

THE COURT: Including you and anyone else is all I was saying so we'll start with you.

MR. GIBBS: Okay.

THE COURT: What are your exhibits?

MR. GIBBS: Okay. Your Honor, our witness and exhibit list was filed at Docket No. 211 and we would offer Exhibits 211-1 through 211-7. And 1 is the Declaration of my partner, Mr. Azman, and 2 through 7 are the exhibits that are attached to Mr. Azman's Declaration.

THE COURT: So really what we're admitting is 197 with its attachments; is that right?

MR. GIBBS: Yes, Your Honor.

THE COURT: Any objection to the admission of 197 with its attachments?

MS. SPIGEL: Your Honor, I thought that it was Document No. 211.

THE COURT: 211 lists them, but it's not the documents themselves. It refers back to 197.

MS. SPIGEL: Oh, I'm sorry. I'm sorry. Got it. Thank you.

THE COURT: So any objection to admitting 197 substantively?

And did I get that right, Mr. Gibbs?

MR. GIBBS: You did, Your Honor. It's Docket No. 197. It's the actual Declaration of Mr. Azman with the exhibits attached. They're just identified on the witness list, which is Document 211.

THE COURT: From 212-547-5615, who do we have on the phone?

MR. AZMAN: Your Honor, it's Darren Azman from McDermott Will and Emery for the Committee. I had un-muted a few moments ago just to assist Mr. Gibbs in case he needed it, but he got through it just fine.

THE COURT: Mr. Azman, he usually needs it so feel free. I'll just leave you on the line.

(Laughter.)

THE COURT: We'll go ahead and admit 197.

(Committee's Exhibit No. 197 received in evidence.)

MR. GIBBS: I'll have a running request, Your Honor. Please don't mute Mr. Azman.

THE COURT: I'll try and leave him on.

MR. GIBBS: Thank you.

THE COURT: All right. Ms. Spiegel?

MS. SPIGEL: Okay. Thank you, Your Honor. Okay. I just want a note related to the sealing, I think parties also have agreed to try and avoid using confidential information today to the extent it's possible. I suppose if something comes up and it becomes necessary, we'll just stop and ask Your Honor exactly how to proceed, but we are going to try to use -- take efforts not to do that.

THE COURT: Yeah, just feel free to object as often as you need to to be sure that we appropriately protect stuff. We've got a couple of ways of doing it. One is: we can literally seal and resume to seal the electronic hearing. It's usually easier if the people that are entitled to see the documents open it up on their own computer and then I simply don't broadcast it, but we'll go how you need to go.

MS. SPIGEL: Okay. Thank you, Your Honor. While we'll get to the objections later in the presentation, we do want to note that just up front that with respect to the

ERCOT objection, we have consensually resolved that objection and obviously ERCOT can weigh in when we get to the objections.

And we've agreed to revise the proposed timeline to object or estimate to their claim, which again we'll go over when we get to the Disclosure Statement Order but I wanted to just preview that up front.

THE COURT: Okay. Thank you.

MS. SPIGEL: Thank you. So, Your Honor, before I get to the substance of the Disclosure Statement, I do want to just talk briefly and put everything in context here. We see this as not a complicated case. We think it's a unique case but that it's not complicated. The Debtor's view is that the winter storm events and extreme pricing destroyed the Debtor's business. Customers didn't pay their bills and ERCOT mass transitioned the Debtor's customers.

The Debtor was solvent prior to some point during the winter storm event. During the winter storm event, the Debtor's management actually took the unusual step of trying to get their customers to move off their platform. They tried to do this before the winter event and during winter event. And although the Committee casts unsubstantiated aspersions at the directors and officers, at all times the directors and officers acted in the best interest of the company. And there are no facts, no evidence to the

contrary. The Debtor ended up filing this case as a liquidating 11. So once again, tried to do the right thing by all parties including customers because there's been no relief from the legislature or otherwise.

The proposed Plan, as I explained on the First Day, is unique. To us, the Plan is about is collective consciousness. The Debtor believes that maximizing value can also include providing relief to customers and that's what the Plan does. If the Plan is confirmed and goes effective, it will be the result of among other things creditors doing the right adjusting under these circumstances.

But the Committee has disregarded this collective consciousness and has taken a scorched Earth approach and going to leave the case administratively insolvent. As I've mentioned, they hired a financial advisor on an hourly basis in a case that can ill afford another advisor and frankly we don't think there's anything a financial advisor can do.

As stated in our reply, the Committee simply is seeing that (indiscernible) where none exist. We had (indiscernible) that Your Honor wanted a customer committee to be appointed to act as a fiduciary for customers, but instead an unsecured creditors' committee was appointed that has no general unsecured creditors and its numbers are also in their customers. And they're spending down the limited

resources of the Estate in name of exercising their fiduciary duties.

The Committee says the Debtor hasn't been cooperating, but it has and the facts show otherwise. More than 2,000 documents and more than 7,000 pages have been produced and the Committee apparently is now going to seek discovery on all the directors and officers and the Debtor's non-debtor affiliates. And at least with respect to the directors and officers, those parties are going to have indemnification claims against the Estate, which will further burn the Estate assets.

The Committee asked us for a three-month delay of the Disclosure Statement Hearing and then this week asked for a two-week delay and although we'll get to the Motion to Quash made by the Debtor later, the Debtor filed that because it was served with formal Rule 2004 discovery requests and was obligated under Local Rules to file an objection by a date certain.

We had thought we had an agreement to enter into a stipulation to try to consensually resolve that Motion, but after the Debtor wouldn't agree to another two-week extension, the Committee decided it wanted to put on for hearing the Motion to Quash rather than try to consensually resolve the matter. We have reached out and told the Committee we are willing to try to resolve it consensually.

Certain of the Committee's accusations and unsubstantiated allegations are set out in the chart that's attached to the reply that was filed in support of the Disclosure Statement. That's Mr. Fallquist's declaration that was admitted into evidence.

The Debtor also included a cash flow budget with the reply so that the Court and parties-in-interest could understand just how limited the Estate resources are and the need to have confirmation on the timeline that's proposed.

We believe that the Committee should not be taking a scorched Earth litigation path that's here when there's we believe no claim and there's no money to be had in this case. The case benefits from doing this on the timeline proposed and to the extent that we don't -- there's not massive litigation against Macquarie in particular, then every dollar that's not spent on litigation will come back to the Estate because they are, we believe, significantly oversecured.

You would think that this case is simple. It's about a storm and the extreme pricing and the resulting havoc that was (indiscernible) on the company and its customers and other stakeholders. We think the value that exists is getting as much as the Debtor's remaining cash to general unsecured creditors as soon as possible and to pursue causes of action against third parties related to the

storm events.

With respect to the Disclosure Statement, we filed that on the first day of the case, March 15th. The proposed Amended Plan is a liquidating plan and reflects the embodiment of numerous proposed settlements and compromises each of which is integral with respect to one another.

The overall purpose of the Plan is to provide for recoveries to the Debtor's creditors in a manner designed to maximize value and balance the harm to customers caused not by the Debtor but by the extreme pricing that occurred during the winter storm event.

Specifically under the Plan, the Debtor's secured lender would, for the benefit the Debtor's Estate, forego the approximately $550,000 of the principal base amount that is owed to it by the Debtor. It would agree to receive interest at the non-default contract rate rather than seeking to collect default interest and otherwise would be paid on its allowed claim including reasonable attorney's fees and be entitled to reimbursement of LC if that LC is drawn and if it's not drawn, that money comes back to the Estate assuming that there is a litigation and attorney's fees don't eat into it.

The holders of allowed Class 5 customer claims who are the former customers, if they vote in favor of the Plan or abstain from voting, they would be considered

participating customers under the Plan.

All customers have the opportunity to receive releases from the Debtor and the other release parties for all claims including with respect to their unpaid bills. That would be in exchange for releases by the Debtor -- to the Debtor and the release parties.

Although the Debtor doesn't believe that customers are entitled to a refund, right, they're a pass-through and we got the money from the customers and paid it to creditors, we did hear from parties-in-interest that sort of the bookend of people being released from their unpaid bills was that people also paid their bills.

And so in order to try to bookend the unpaid versus the paid, we have revised the Plan to provide a carve-out to the customer release, so if a customer opts into a customer release -- or doesn't opt out of the customer release, excuse me, they would be entitled to assert a claim so they have to file a claim for the amount that they paid for their electricity consumption during the storm. And the period is defined as February 13 through February 19.

If they do that and the claim matches the Debtor's books and records, they would have an allowed claim and they would be entitled to share some causes of action related to the winter storm. So if the Debtor successfully

pursues causes of action related to the winter storm, then those parties would be able to share pro rata with other general unsecured creditors with respect to those causes of action.

Any former customer that doesn't wish to exchange releases will be considered a non-participating customer and would not be treated as having an allowed Class 5 customer claim. Rather that customer would have a temporarily allowed claim in Class 4, which is the other general unsecured claims, purely for the purposes of voting on the Plan.

For all other purposes, if a non-debtor as a non-participating customer highly properly filed a unsecured claim, then they would be treated as the holder of the Class 4 other general unsecured claim in Class 4. Then other than for purpose of voting on the Plan, any former customer who does not wish to exchange release so the non-participating, but they don't file a proof of claim, then they wouldn't have a claim against the Debtor.

With respect to holders of other general unsecured claims, they would receive on a pro rata basis the aggregate amount of available cash that's in the Estate and a net recovery proceeds from any causes of action. As I mentioned, with respect to causes of action related to the winter storm event, they would share pro rata with those

customers who have allowed claims for paid amounts.

The Debtor would appoint a plan administrator and that plan administrator would act as a fiduciary and have full authority to administer the liquidation and wind-down of the Debtor under the provisions of the Plan.

Your Honor, with respect to approval of the Disclosure Statement and the voting procedures, as set forth in our Motion and the Reply, the Disclosure Statement satisfies the requirements of Section 1125 of the Bankruptcy Code. As Your Honor knows, the purpose of the Disclosure Statement is to provide adequate information, that is, information of a kind that has sufficient details to enable a hypothetical reasonable investor to make an informed judgment about the Plan. The Disclosure Statement Hearing is not intended to be a mini confirmation hearing and objections pertaining to the confirmability of the Plan are appropriately left for confirmation.

The Motion also seeks to implement standard voting procedures in this district and the Debtor believes will allow voting and both tabulation to proceed in a fair and oddly manner.

With respect to former customers, the Debtor ended up scheduling all of the Debtor's former customers as having contingent unliquidated disputed claims in undetermined amounts. The Motion seeks to temporarily allow

for former customer claims assuming no proofs of claim have been filed after the voting record date in amounts of a dollar solely for voting purposes. So similar to the original proposed, if there's a contingent unliquidated claim and no proof of -- and the proof of claim hadn't be filed, the temporarily allowance would be counted as a Class 5 claim for participating customers and as a Class 4 claim for non-participating customers.

As I mentioned the only timely filed objections we received were from the Creditors' Committee and their class. The non-timely filed objection we received the other night was from Ms. Karen Prescott, the alleged tort claimant. We attempted to add language to the Disclosure Statement to address what we believed were the disclosure statement objections, but otherwise we believe the objections are plan confirmation objections and are not ripe for discussion. And as we'll get to, we don't believe any additional disclosure is required in the Disclosure Statement related to tort claimants.

On the 27th, we filed redlines of the proposed Second Amended Plan, the related Disclosure Statement and the Disclosure Statement Order including exhibits to the Disclosure Statement Order.

Before we get to the objections, if Your Honor would like, I can go through the revisions to the Disclosure

Statement, the Plan and the Order just depending on how you would like to proceed.

THE COURT: So first of all, I think that the revised Disclosure Statements are a big improvement over what we had and I appreciate the efforts that are being undertaken. I was not able to discern from them with respect -- and I know that the releases have been revised. I could not find the Disclosure Statement on a release party by release party basis -- and I don't mean you have to identify each one and say, "Here it is," but to be sure that you cover them all, why it was in the best interest of the Estate to release them.

I think with respect to the officers and directors, the Debtor said, "With respect to the officers" -- and I'm paraphrasing -- "officer and directors, they may have indemnity claims, therefore we're releasing them, gets rid of the indemnity claims. We think that's a good deal." And I don't know that you can name each one by name.

But with respect to any other releases, I didn't see any reason given in the Disclosure Statement as to why you were doing those. And I don't think that's a confirmation objection. I think that's an informational objection. Maybe I missed it, but is that fair?

MS. SPIGEL: No. Your Honor, I think that in

Article 2, Section D of the Disclosure Statement, we have included additional disclosure related to the releases. It's on page 17 of the redline at Document 213-2. With respect to --

THE COURT: Here, let me -- hold on, let me get that open.

MS. SPIGEL: Oh, absolutely. I'm sorry.

THE COURT: 213-2, page 17?

MS. SPIGEL: Uh-huh. Yeah.

THE COURT: I'm on page 17 of the redline.

MS. SPIGEL: Okay. Where it says, "Debtor releases."

THE COURT: I'm on page 17 of the ECF.

Do you want page 17 of the Disclosure Statement; is that --

MS. SPIGEL: I'm sorry, it's Document No. 213-2.

THE COURT: I'm at 213-2 and at the top, I'm on page -- let me get there. I think I know where we're supposed to be.

MS. SPIGEL: 30 of 80.

THE COURT: Yeah, it's 30 of 80. Okay.

MR. GIBBS: I think it's 30 of 80.

THE COURT: Right, I'm there.

So how do I tell how it benefits the Estate to give these releases? I'll give you an example. You say,

"On the carry-over, third, the Debtor believes --

MS. SPIGEL: Yeah.

THE COURT: -- that there are no viable claims against its non-debtor affiliates." Let me assume that's right.

MS. SPIGEL: Okay.

THE COURT: How does it benefit the Debtor to give releases? I understand it benefits the non-debtor affiliates. The Debtor isn't forced to sue the non-debtor affiliates under the Plan. An administrator could choose to sue them. I'm trying to understand why isn't benefit of the Estate to give the releases up front? That's the question.

MS. SPIGEL: Your Honor, the entirety of the Plan is based on a compromise and settlement from an unprecedented crisis. Griddy was specifically targeted by numerous parties (indiscernible) business model on the prices that were charged to pass-throughs to customers. Griddy has no control over that. But Griddy -- the entirety of the company has become a target for lawsuits.

And part of filing this case for chapter 11 is to enable the entirety of Griddy itself and all of its non-debtor affiliates, et cetera, to be essentially done with this unprecedented crisis, to do the best that it can under the circumstances and to move forward. And we think that that is a benefit to the Estate because the whole Plan is

hinged -- and parcel of that is all of these settlements and compromises embodied in the Plan that includes having --

THE COURT: I don't understand how giving -- how the non-debtor affiliates -- there's a -- first of all, I want to back up for a moment to the Motion to Quash. In the Motion to Quash, I had originally believed that your firm was representing the non-debtor affiliates in that Motion, but then I understand from subsequent filings that your firm is not representing the non-debtor affiliates.

Here, I understand why it's in the interest of the non-debtor affiliates, I even understand why you all think this is just a good idea for the country and I don't even want to question that as I've got it. I mean, I still need to know and voters need to know why it is in the best interest of the Estate to release non-debtor affiliates. The non-debtor affiliates don't have any claim, I don't think, against the Estate. Why does it benefit the Estate to release them?

MS. SPIGEL: First of all, I just want to clear up the Record. We do represent certain non-debtor affiliates. We represent the parents and the indirect parents of Griddy Energy. We also, for the limited purposes of accepting discovery from the Committee, we represent Griddy Technologies and Griddy Pro.

THE COURT: So let me tell you what I had

understood. And if I understood this wrong, just fix it. In your disclosure, you tell you represent those entities, but I assumed that you did not represent them in any manner that might be adverse to the Estate itself because you also say you were disinterested.

MS. SPIGEL: Right.

THE COURT: So, yeah, representing them didn't bother me. You'll notice I signed your Employment Order last night and I think I read that right, but to the extent that there would be a lack of disinterest, I don't think you could or are purporting to represent them.

MS. SPIGEL: Right.

THE COURT: So I need to know from the Estate's point of view not from the non-debtor affiliates' point of view, what is the benefit to the Estate? And I think that is informational. I don't -- if the answer is there is no benefit to the Estate, we think it's the right thing to do, I'm actually okay with that answer and people can vote on it. But I think you need to say up front everything you're going to say about why these releases are granted and if that includes a truthful statement that says, "There is no benefit to the Estate of releasing the non-debtor affiliates, the Defendant nevertheless believes it is the ethical, moral and correct thing to do and we ask you to do it," I think that is fair informationally. That may turn

out to not be something I can confirm and maybe it is something I can confirm.

And you'll recall at the last hearing -- and I'm looking at Mr. Jordan -- I said, "I don't even understand how you can sue these people." And now he's filed something that talks about delivery of electricity. Your client doesn't deliver electricity, prohibited by law from delivering electricity. I'm not so sure what all these lawsuit are about, but I'm also not this roving master in equity that can kind of reach out into Texas and say, "I'm going to have everybody behave." And that's why I need this to be really clear.

MS. SPIGEL: Well, Your Honor, look I do think it is the right thing to do under the circumstances of this case. I think that as part of the proposal for the entirety of the Plan that it benefits the Estate is part and parcel of it. We filed a (indiscernible) 11 to try to alleviate the issues related to the storm for as many people as we could and that -- and we think that that is beneficial to the Estate.

THE COURT: How is it beneficial -- I understand your argument it's the right thing to do and I really don't want -- you may be wrong that or you might be right about that, but it's certainly a fair argument that it's the right thing to do. I don't still understand how that benefits the

Estate. And if the answer is "It doesn't," then this needs to say that so that when whatever we do gets appealed, if it turns out I say, "I'm going to authorize this people" -- I don't know the law for sure. It may be that people can vote for giving these releases and that you make some deal where the Committee gets another X dollars and they say, "That's fine, we're okay giving those releases." It may be that having said, "There's no benefit to the Estate," makes you lose on appeal even if you can convince me it's the right thing to do, and I'm not discounting that you might convince me of that, but it has to be there, it has to be there informationally.

I'm going to actually -- you're hearing my point and you're being very responsive to my point and I appreciate that. I probably ought to let Mr. Gibbs fight his own battles for a minute before we go much further, but I think I've identified them and I'm sympathetic to what he's saying. I don't know that I'm sympathetic that these folks should never get releases because, Mr. Gibbs, you might negotiate something where you agree to give them releases.

MR. GIBBS: Your Honor, I think you're exactly right, that very well could be resolution at the conclusion of our investigation. I think that counsel for the Debtor is struggling to answer your question because the simple

answer is: it is not in the Debtor's best interest to give non-debtor affiliates releases for no consideration. And I'm fine with them saying that, but -- and if they want to say it's the right thing to do and it's part of a grand plan and one part all meshes with -- each part meshes with the other, that's their argument and we'll fit that battle if we choose to at confirmation.

But from an informational standpoint, I completely agree with the Judge -- with Your Honor that it isn't adequate to just put in the additional paragraph that they put in in 213-2. It's part and parcel of kind of a larger issue regarding the proposed releases and it's probably best to wait until counsel for the Debtor finish their remarks in support of their Motion.

THE COURT: But if, in fact, they include -- and they need to think about this. I don't -- I'm not going to make Ms. Spigel tell me precisely what language she's going to include, but if she were to agree with me and include the language I just said, would that then satisfy your disclosure objection?

MR. GIBBS: It's a hard question to answer because they -- I think it would partially satisfy our disclosure objection in that it would put on the Record what they believe is the support for what they're proposing in the Plan.

What we don't think should happen is the Disclosure Statement go out before we have an opportunity to complete our analysis of whether or not valuable causes of action against the non-debtor affiliates exists and what -- and that the Disclosure Statement should also include at least our assessment of the potential value of those recoveries so that customers and creditors, especially the customers who are the benefits of the proposed release if they vote in favor of the Plan or don't vote at all so that they know more intelligently what they're giving up in exchange for getting the releases being honored.

THE COURT: And is that really two weeks for you to understand that and have your statement ready?

MR. GIBBS: It's slightly longer than that, Your Honor, and I don't mean to cut the Debtor off in their arguments and support, but they did tell the Court that we asked for 12 weeks. We did and it's probably not shocking to the Court that the Committee's first proposal is more than they thought they needed. That's sort of the essence of negotiation.

We did come back to them last week with a proposal for a two-week standstill and it wasn't so that we would just need to two weeks, we wanted two weeks to try to see if we could negotiate global resolutions of all objections to the Plan and if we couldn't, then we'd resume.

So it wasn't that we asked for 12 and then we asked for two. I can tell Your Honor that the answer was the same "No," that they insist on going forward on their timeline, which is why we're here today. We think --

THE COURT: Yeah, I'm not terribly worried about promoting a deal. You all can have a deal, not have a deal.

MR. GIBBS: Yeah.

THE COURT: I'm worried about getting the information --

MR. GIBBS: Yeah. And I'll

THE COURT: Look here's what I've told people before and let me just say it here. I'm going to allow the Committee to communicate with its constituents what it thinks is wrong with the Plan and I've allowed them to do that based on adequate information provided to the Committee. It is ordinarily much cheaper to include a statement in the Disclosure Statement that says, "Enclosed with this Disclosure Statement packet is an informational statement by the Committee that sets forth its position. The Debtors disagree with it," but it's enclosed and it's in the same mailing packet. It's a lot cheaper.

MR. GIBBS: Yep.

THE COURT: However if we approve the Disclosure Statement and the Debtor -- and the Committee -- I'll say three weeks from now so that I'm not taking sides in the

two-week battle -- three weeks from now has a statement it wants to transmit, it gets to transmit it and the Debtor gets to pay for it.

So what I would suggest the parties think about is that we get this Disclosure Statement in a position to approve it in the next few days where it is then held before it is circulated for an agreed period of time so that the Committee can include its statement. I'm not going to require that. I think once the Disclosure Statement gets in order, the Debtor has the right to send it out without a statement by the Committee. I will not require the Debtor to include the Committee's statement, but I will require the Debtor to pay for it when the Debtor -- when the Committee (indiscernible) on its own. That's an administrative expense of the Estate.

And I have expressed before that I have seen activities by this Debtor that show a lot of good faith. Their communications with their customers as we went into the crisis do show good things about -- when I've said that at a prior hearing -- and I will accept at face value that the reason that the Debtor wants to rush is a good one because it's cheaper to rush. That may though need to give way to slight delays to be sure that the Committee can get don't what it needs to get done.

So, Ms. Spigel, we'll go back to you, but I

wanted you to know where I am right now on that.

MS. SPIGEL: Your Honor, just related to the Committee's statement, if Your Honor's inclined to allow them to have a solicitation letter that's separate from the Disclosure Statement, we think that that is -- unduly prejudices the Debtor's solicitation. We think that if they had a statement, we could add it into the Disclosure Statement itself and that we would -- they could have their position, we can have our position. But having a separate negative solicitation frankly I think that unduly prejudices. And if you're inclined to just have the separate letter, then I think the Debtor should be able to include its own separate letter as to why the Plan should be confirmed.

THE COURT: So look, the way that I read the case law on this -- and *Century Love* is the leading case on this. I think -- that's old memory, but that's my memory.

MR. GIBBS: Yes.

THE COURT: I not only -- I can't control what the Committee does. The Committee is free to do what it wants. If it chooses to send a letter, I have no regulatory authority over what the Committee does. However, I've got purse string control and if they don't get to include it in your packet, obviously I'm going to make you pay for it as an administrative expense when they include it separately.

On the other hand, if you're offering to include it in the packet and they refuse, I may not find it's a reasonable expense.

So I can't control their words. They're free to communicate to their constituency and I have no regulatory authority over their words. You have a remedy that if they communicate information in bad faith to their constituency of designating all of those votes. But it isn't -- sort of under First Amendment language, I don't get to pre-censor whatever the Committee gets to do. I only get to pre-censor what you get to do and that's because of the way 1125 works.

But I would give them -- I would give you an opportunity to amend this to give your position as to why these things are necessary and then to reference that there is an attached committee statement. If you want to add other things from the Debtor in the packet, that is subject to the disclosure statement requirements and we have to approve it. Doesn't strike me there's anything wrong with that. If you each want to have whatever this is, an 80-page disclosure statement, and each of you want to have a three-page letter that goes with it, I don't have a problem with doing that.

And I'm not going to give them 12 weeks to do it, but I'm going to give him some time to get his letter to you in a form where you can, A, respond to it and, B, include it

and we don't have a huge amount of delay. But I don't think I can tell them they can't do it.

MS. SPIGEL: If I can just ask --

THE COURT: I think I have no authority to tell them they can't do it in advance, right?

MS. SPIGEL: I'm sorry, can you repeat that?

THE COURT: I don't think I have any authority to tell Mr. Gibbs' client, the Committee, that they cannot communicate with their constituents or that I can -- I also don't think I have any authority to regulate the content of their communication in advance. I have the authority to say that their communication will inappropriate in retrospect and therefore I'll designate votes on account of it, but under the case law, I think that's the limit of my authority. And I'm happy for people to tell me I'm wrong about that.

MS. SPIGEL: It is my understanding, Your Honor, that in order for a committee -- not only the Debtor, but in order for the Committee to influence solicitation related material as opposed to just communicating with their constituents that that, in fact, was subject to your approval. It's one thing to --

THE COURT: So I probably need to be educated about that then because that's not what I thought. First of all, I don't think that I can force you to include their

letter in your packet. You're telling me you want to do that, which is fine with me. But once you said that -- here's what I think -- the way I think the law works and I'm going to give you a chance to prove to me I'm wrong. Until the Disclosure Statement is sent out, no one can solicit votes.

After it's sent out, people can solicit votes and I don't regulate those communications other than through a designation procedure. And if you believe the law is different than that and that I can regulate the content of committee communications, that is wholly different than my belief and my belief may be wholly wrong and I'm willing to let you convince me of that.

MS. SPIGEL: I was talking about in connection with including information in the Disclosure Statement. I certainly think that to the extent that we can come to agreement -- I don't agree with their language, but to the extent we can come to agreement on language to be included in the Disclosure Statement that would be subject to your approval, that is what I was talking about.

THE COURT: No, I agree with that. I completely agree with that. But I wasn't -- he's not ready with the language yet. I'm trying to get you an approved disclosure statement in the next few days and that -- the easiest way to do that is to simply have an attachment. If you want to

wait until he gets it and then include it in the body of it, that probably would -- I don't know if that works for Mr. Gibbs or not, but I might. You're correct, I can't force you to include anything from him in your Disclosure Statement. That is your statement.

Mr. Gibbs, do you agree I can't force them to include your position, that's something you'll have to do?

MR. GIBBS: I agree with that, Your Honor, it is something that would have to negotiated. I think that -- well, if I could? Let me spend a minute or two and kind of complete the Record at least as the recap of what's transpired in the five weeks since the case was filed and in the three weeks since the Committee was formed and we were retained.

Your Honor heard that the Debtor commenced the case I guess three weeks after the conclusion of the storm that devastated the state and shut Griddy Energy down and they filed the Plan on the first day of the case with their Disclosure Statement.

And as you heard counsel for the Debtor reference, the Debtor's Plan proposed to release its primary secured creditor in exchange for an agreement by that creditor to walk away from a fairly small amount of cash, about $550,000 that it held a lien on. This is the same creditor that the Debtor had agreed to give an overreaching

adequate protection package on the first day of the case that Your Honor said was wholly unnecessary given the level of security that creditor enjoyed. And it's also the same lender that was paid over 90 percent of its outstanding debt in the three weeks before the storm and the filing. It's also the same lender that the Debtor's CEO used to work for and that holds a debt instrument that gives it a right to convert its debt into an ownership interest in the non-debtor parent of the Debtor, which also owns the certain non-debtor entities that own valuable assets.

It's the same Plan as Your Honor heard offered all non-debtor affiliates and all D&Os releases of their claims that the Debtor may possess against them for no consideration from any of them.

The Plan is structured so if the creditor doesn't vote, the customer doesn't vote of if they vote and don't opt in to the opt-out they get a release and give a release.

Your Honor, the Debtor pretty baldly asserts in the omnibus reply to the objection -- it's Docket 215, paragraph 7 -- and I think you've heard almost the same words today from Debtor's counsel. The Plan is a compromise of all matters leading up to the case. Each part of the Plan is part and parcel of the other parts of the Plan and all matters must settle in order for the Plan to work.

The Debtor is controlled by officers and

directors who also directly or indirectly own the non-debtor affiliates and these D&Os and the other entities are all getting releases in exchange for proposing a plan that affords the releases to customers.

This may be a great deal for the customers or it may not, it may be a terrible deal. And the job that I have, as counsel for the Committee, is to find out and that's all we're trying to do. We are trying to do a rapid but thorough investigation of the Debtor's operations as well as the business of the non-debtor affiliates and the actions of the D&Os to try to assess and evaluate the merits if any of the causes of action that might exist against these release parties in order to try to quantify the amount of potential recovery that the customers would be giving up in exchange for getting a release of debts that they owe to the Debtor.

In attempting to do our job, we've been castigated and vilified frankly by the Debtor in every conversation we've had with them, pretty much every email we've received from them and every pleading that they filed now in response to our objection and at least three times I think today been accused to employing a scorched Earth litigation strategy. We're simply trying to do our job.

The Committee was appointed by the Trustee, consists of three former customers and they took seriously

their fiduciary duty to represent all creditors including the other 27,000 former customers and they've asked us to take a look at what causes of action may exist and that's what we're trying to do.

The Debtor would clearly prefer that there is no inquiry or no examination be done. They pushed the Plan for vote immediately before we've had a chance to do our job and they'd like the Court to conclude that because they've included a couple of paragraphs in the Amended Disclosure Statement saying in a real conclusory fashion that they don't believe causes of action against these (indiscernible) parties exist that their Disclosure Statement obligations have been satisfied and that the Plan should be sent out. They decided that they know what's best for their former customers and they want to entertain no conversation on any alternatives to the Plan or the proposed timeline.

Case in point, Your Honor. Well, we've indicated to the Debtor that we think a potential claim against the secured lender for marshaling exist and needs to be investigated. Their response is "No, you don't need to investigate that." And then they went so far as to point out in their omnibus reply -- I think it's in paragraph 32 -- that the guarantees executed by the non-debtor affiliates waive marshaling.

Well, they forgot to also include that paragraph

that the debt instruments, which the Debtor signed, in favor of Macquarie do not contain a waiver of marshaling. And it's the Debtor's claim for marshaling that we think needs to be investigated because this lender has its secured claims against non-debtor assets that have value and we believe we need the opportunity to determine whether a meritorious marshaling claim exists and we haven't had a chance to complete that.

They also take great pains to belittle our desire to investigate whether sensitive consolidations (indiscernible) before we can support releases of the non-debtor affiliates because we like you can't find any benefit to the Debtor's Estate of releasing the non-debtor affiliates. And they're activity opposing our efforts to get any discovery from these non-debtor affiliates and we'll take that up on the Motion to Quash later this morning.

We already -- the examination we've got and the documents that they've given us already confirms that evidence of at least four or five of the -- I think it's a seven-part nonexclusive list of factors that puts courts and the Fifth Circuit (indiscernible) in considering (indiscernible) exist here and that's why we've been stiff-armed in getting any documents from the non-debtors through -- from the same people that own and run the Debtor that also run those non-debtors.

We think it's unwise to conditionally approve the Disclosure Statement today, Your Honor, and instead just ask us to include the letter. We think it is better to adjourn the hearing for four weeks and let us have a chance to complete and come back to the Court and present to the Court what we think would be appropriate and additional information from the results of our investigation in the Disclosure Statement. And if the Debtor doesn't agree to it and the Court doesn't think it should be included, we will provide that information to the customers and to the creditors in the case.

Your Honor, the Local Rules complex cases in the Southern District in paragraph 29, the one that deals with cash collateral and financing orders, that contain a release of claims against lenders or other third parties by the Debtors, Local Rules give the Committee 60 days at least from the date of the Committee's formation to investigate the claims. Even those this isn't a cash collateral order or a financing order, it's even larger.

It's the Plan (indiscernible) that they're seeking to confirm and they're not giving us at least 60 days. Sixty days from the time this Committee was formed would take you to May 30. That's roughly four weeks from today. We think that's the appropriate solution for where we find ourselves today. They made I think good faith

efforts to add in response especially to ERCOT's objection this general language to try to beef up the Disclosure Statement, but it's woefully inadequate with respect to any analysis of the potential value of the claims that may exist against the parties that are being released. We think by omission they haven't done that investigation and summarily said, "They just don't exist. This is a unique but simple case and we don't think any causes of action exist."

Just let us do our job. We may agree, but we're not there yet and, in fact, we think there are some potentially meritorious claims.

Postponing this to be approved on the 30th and then go out at the end of the May rather than at the beginning of May we don't think is an unrealistic or inappropriate request. All of the potential confirmation objections that we have that we laid out initially in our disclosure statement objection certainly are more appropriate to be brought before the Court at the Confirmation Hearing, but we don't think it's the right thing to do to approve the Disclosure Statement today as amended and then just give us a short period of time to add several-page letter explaining our concerns.

THE COURT: Thank you, Mr. Gibbs.

MR. GIBBS: So it's a bit of a modification to what you were suggesting, Your Honor. Thank you.

THE COURT: Thank you. Ms. Spigel?

MS. SPIGEL: Thank you, Your Honor. We have -- the Debtor has been tried to work with the Committee consensually. We have a very different view of the situation. We believe that we have produced all of the responsive documents of their document requests with respect to non-debtor affiliates. We told them that would work with them, but they wanted to have a (indiscernible). We have produced documents in the Debtor's possession related to non-debtor affiliates.

With respect to Macquarie, the idea of marshaling, first of all, is a very hard claim to make, but let's just say that they could make it. Then if they were able to do it, the affiliates would have a claim against the Debtor, step into the shoes and be the secured creditor unless they could prove some sort of inequitable conduct and there is no inequitable conduct here. We ended up in bankruptcy of the unprecedented crisis. So while we understand that the Committee wants to try to come up with claims to try to get additional value here, if the additional value -- if there's no claims, there's no additional value. And we have been cooperative. There's thousands of documents that have been given to the Debtor -- I'm sorry, the Committee.

When we talk about the cash collateral rule,

putting aside that that is not applicable here, there are plenty of cases where plans are filed on the first day and are confirmed within a reasonable time period. The Local Rules are a guideline and we understand that, but that doesn't mean that Your Honor doesn't have the ability to allow this case or any other case frankly to be on a different timeline.

I think the biggest issue here is that we're forgetting that there's very little money in the Estate. If you look at the budget, there's $900,000 projected on a case basis to be in the Estate at the end of June. That doesn't account for the $380,000 that the Committee has spent to-date and that doesn't include either the Committee's (indiscernible) for May or June.

Allowing 60 days essentially means that the Committee could look into claims, which we believe obviously because it's in the Disclosure Statement that we believe it, have no merit and (indiscernible) end up in a chapter 7 and we are trying to avoid that situation. And so while we understand that the Committee has -- would like to investigate claims and that's fine, we don't object to that investigation, and certainly they continue -- they can continue that investigation for the next four or five weeks before confirmation, we don't believe that the Disclosure Statement certainly should be delayed as a result of that.

The idea that there are claims here we have looked into and, as you noted, we don't think that (indiscernible) certainly could represent different non-debtor affiliates because we would be disinterested. We looked into those claims and we don't believe that they have any merit. Again that's fine for the Committee to do their investigation. We're not saying don't do it. And we do believe that we gave them documents, but we don't believe that there should be -- and we do think it's (indiscernible). We have totally different views of what is going on in this case. We are willing to provide them an opportunity to put information in the Disclosure Statement and we have asked them many times if they wanted to include information and they haven't.

And so the idea to kick these cases, then we're going to end up administratively insolvent and I don't think that is in the best interest of any of the stakeholders and I don't think that that is the Committee fulfilling its fiduciary duties to its constituents.

THE COURT: Thank you. Let's move to the Motion to Quash.

Who's going to represent the non-debtor -- as I understand it, you're telling me you don't need motion to quash against the Debtors because you've produced, whatever documents you have already been produced. The Motion to

Quash under that statement would be moot as to the Debtors. So all I'm worried about, I think, are the non-debtor affiliates.

Why shouldn't the non-debtor affiliates --

MS. SPIGEL: Your Honor --

THE COURT: -- respond to the requests?

MS. SPIGEL: Your Honor, my partner, John Lawrence, is going to be responding to you with respect to the Motion to Quash.

THE COURT: Thank you. Let me get that line added in. I see we have a 214.

MR. LAWRENCE: Yes. Thank you, Your Honor. John Lawrence, on behalf of Debtor. And, I'm sorry, you were unmuted. I missed your question you asked.

THE COURT: Oh, I apologize. Ms. Spigel says everything that the Debtors have that's been requested has been produced, which then makes the Motion to Quash moot as to the Debtors. I don't understand why the non-debtor affiliates shouldn't similarly produce what they have. I don't know why we're quashing this as to the non-debtor affiliates and I don't know why the quash as to the Debtors isn't not moot.

MR. LAWRENCE: Well, let me make one clarification. Just what the non-debtor -- sorry. What the Debtor has produced or the Debtor agreed to produce on Day

One and has told the Committee consistently they would produce is all documents in the Debtor's possession that relate to the non-debtor affiliates so long as those documents also relate to the Debtor in some way. So what has been produced by the Debtor would not include every document related to non-debtors. It does absolutely include every document that they have requested of the Debtor that relates to non-debtors that has any sort of connection or relationship between the Debtor and the non-debtor. And so that is still (indiscernible), Your Honor.

And maybe let me explain to you our theory of why that makes sense. Before I do that, (indiscernible) step back so I can say I think all (indiscernible) cases like this are import for making arguments about things about things like fairness and justice and that is (indiscernible) what is at issue in every case, right? But here I think the reason for the Motion to Quash -- and this relates to Ms. Spigel' arguments on the Disclosure Statement as well -- is something different. It's really -- it sort of turn on investments, right. It's diminishing returns. And we have nothing to hide. What we can't do -- we can't afford to do is to waste all the Estate's assets on chasing rabbits that don't exist and so let me --

THE COURT: Yeah, but as to the non-debtor affiliates, the Estate shouldn't spend 10 cents producing

for the non-debtor affiliates. That's a non-debtor affiliate expense.

What do I care about them spending money?

MR. LAWRENCE: Because the Committee will then spend money on that work. That is the issue.

THE COURT: I understand the Committee's going to spend money on it. But your firm will spend zero on producing from non-debtor affiliates. And the Committee only gets paid if their work was reviewed in retrospect likely -- I forget the exact wording out of the current Fifth Circuit standard, but likely to produce beneficial results.

MR. LAWRENCE: Well, I -- without prejudging future requests for fees, I would say it would be difficult for me to imagine a viable objection to having -- their having reviewed documents after Your Honor as ordered us to produce them. So I hear you, I think --

THE COURT: Oh, I'll make that real easy.

Mr. Gibbs, if I allow you to do this, I am not saying that what you want to do was a reasonable expenditure of your time or money. It's your choice and your risk. We're not changing that because of the Motion to Quash and I don't think you expect me to; is that correct?

MR. GIBBS: I absolutely don't expect you to. I know what *Pro-Snax* says and I am --

THE COURT: I guess it's -- yeah, the aftermath of *Pro-Snax*. I forget what that case is, right.

MR. GIBBS: Yeah, me too. I just always remember *Pro-Snax*, but we are --

THE COURT: Bad memories last longer than good ones, Mr. Gibbs.

(Laughter.)

MR. GIBBS: I think that's right. We will undertake that risk. We believe that what we're doing is not only warranted, but it's necessary and it's appropriate and we'll defend our pre-application at the appropriate time.

But I think Your Honor's question of Mr. Lawrence is absolutely accurate. Why should it matter to the Debtor if the Committee wants to get information from the non-debtors? It's not a burden on the Debtor's Estate to have Debtor's counsel defend that effort.

THE COURT: Go ahead, Mr. Lawrence. I'm sorry to interrupt. I don't think that that -- I didn't want anybody to misunderstand that me authorizing them to do something means what they've asked to be authorized to is reasonable because I don't know what information they have. I no way of judging the reasonableness today and wouldn't preclude a determination that this was an unreasonable effort of their part in retrospect.

MR. LAWRENCE: Understood, Your Honor, and thank you. It's really the same basic point, Your Honor, which is that based on the Rule 2004 requests that currently exist, we're talking about the Committee taking discovery from 14 more entities, 14 separate entities. They have also said they want to take discovery from the six directors and officers. We're talking about more than 20 targets of investigation. It is an expense issue. At bottom it's an expense issue. And it's a what is needed for the investigation, right? Rule 2004 is broad but not limitless. It's their burden -- it is their burden to show there's good cause for the request.

And if I can, Your Honor, explain why we don't believe there is good cause to broaden the discovery beyond what's already been produced? The Committee has said -- and it makes sense -- they are doing an investigation, right? They are doing an investigation and they want to know whether the releases are appropriate and that they want to know does the Debtor have claims against other parties? And Macquarie -- and those documents and others.

Does the Debtor have claims against its non-debtor affiliates? That's their question. If I'm asked, as a lawyer, my client to determine whether or not they have claims against somebody else, where do I look? I look at my client's files -- and in particular I look at my client's

files that relate to my client's relationship with those entities that they might want to sue. We have given them that information. We have given them the information they would need to determine whether or not there are claims or are viable claims against the other entities.

If they determine ultimately there are viable claims, could they then seek additional information from those targets? Potentially. That's not where we are today. Where we are today is the question of whether or not they need discovery from like 20 more people including entities to determine whether or not the Debtor has claims against those people.

And while Your Honor obviously has to right to deny the requests in the future, the cash burn in this case -- we're going to run out of cash before we get to the request. It makes sense to limit the discovery to what is needed to do our jobs. We understand their jobs and respect their jobs, we understand their duties and their duty is to investigate whether they have claims right now. And what we have given them is what is reasonable, whether or not they have those claims. That is (indiscernible) argument, Your Honor, is that anything beyond that is something that is not necessary to determine whether or not they have these claims.

We have (indiscernible) we've offered

consistently to work with them. When we conferred with them on these issues on the 16th of April, we said, "Let's start with this. Do you want to start with this idea I told Your Honor today? If you have more questions about individual entities, let us know." We've been doing that. We've given them more information about certain specific entities. We've done that formally and informally through discussions with the financial advisor and otherwise and that's what we want to continue doing.

We think it makes the most sense for the parties to continue working cooperatively through this. We don't think there's more they need, but if they can give us more specific requests of why they need we'll give it to them, if we think it's appropriate. In their objection itself, they listed two things that they said they needed related to the non-debtor affiliates. I reached immediately and I said, "You want these? We'll give them to you." We gave it to them.

It is (indiscernible) so not appropriate for them to just start off searching for documents related to 20 different entities without being able to connect any of those entities to a claim from the Debtor at this point.

THE COURT: Thank you. Mr. Gibbs, I want you to respond to one issue, which is whether with respect to your requests to the Debtors, he is saying that they shouldn't

have to turn over to you material about a non-debtor entity that is unrelated to the Debtors. That seems like a pretty rational line to draw.

Do you have any problem with that line?

MR. GIBBS: No, I don't, Your Honor, and I think it's kind of a much ado about nothing. We asked for the Motion to Quash to be heard today because of the fact that the Debtor was pursuing approval of the Disclosure Statement today and asking to have a plan go out for vote today before we've had a chance to complete our investigation, and where we acknowledge that the Debtor has been forthcoming and responding to our document requests, they've gone us a lot of pages and a number of documents and we're dutifully reviewing them and they have given us information in the possession of the Debtor related to non-debtors, but there are a number of non-debtors that are also guarantors or co-makers of the debt to Macquarie and some of them have pledged assets. And there are -- there's an overlap of the ownership and overlap of the officer and directors.

And the targeted information that we will be wanting from non-debtors we think is related to -- they're related to the Debtor because they're either co-obligors or guarantors of Debtor's obligations and their assets are being used by the Debtor and we think it's -- the nexus is clear and the appropriateness of doing that discovery is

also entirely clear.

So saying 20 entities and 14 entities and six people, while as I understand it they've removed the release from three of the six officers and directors in their Amended Plan so that sort of cut that number in half. And there's a number of shell corporations that have -- we understand have no assets and are related to non-debtor affiliates but not related in particular to the Debtor's operations. It's really a couple of debtors and its direct and indirect parent -- excuse me -- a couple of non-debtors and their common direct and indirect parents. So it's three or four non-debtor entities all of whom are obligated to Macquarie some of whom have pledged assets to secure their obligations to Macquarie that we're -- we need to focus on.

THE COURT: All right. Here's what we're going to do today: with respect to the request to conditionally approve the Disclosure Statement, for the reasons I've gone through, I don't think that the Disclosure Statement is fully ready for any conditional approval because it fails to set forth the benefit to the Estate questions and I want to give the Debtor an opportunity to get that done. I'm not denying conditional approval at this point. I'm allowing the Debtor to amend to obtain conditional approval of the Disclosure Statement.

We're going to return for that for hearing on

May 20th, at 10:00 o'clock in the morning. I think it is unlikely, not impossible, that the Committee will be able to have further delay beyond May 20th if it doesn't then know what's wrong. I know they've asked for more them than that, sorry. So we'll see you all on that May 20th, at 10:00 o'clock.

With respect to the Motion to Quash, I'm going to ask that an amended order be uploaded by the Committee with Mr. Lawrence having signed off on it that honors his request as to the Debtor not having to produce information they have about non-debtor affiliates that is unrelated to the Debtor. That is a reasonable line to draw. And similar lines can be drawn with respect to the non-debtor affiliates if there's some over-expansive requests. But in general, I'm going to require that the non-debtor affiliates and the directors participate and respond to the discovery. I'll get you all to upload an order that does that.

That discovery needs to commence now. If there is recalcitrance in that discovery, then maybe Mr. Gibbs will have some argument on the 20th that you all didn't respond quickly, but I'm pleased to hear really from both sides that that's not been a problem in the case. People have been promptly responding to stuff so I don't expect there to be a difficulty about that.

With respect to the ordinary course

professionals, which you all haven't talk about, there was already a certification filed on that. I'm going to orally authorize the two that aren't the -- I don't remember the name of the company, the corporate communications company. I'm not going to authorize that part of it today and the reason I'm not is: there were pretty good objections filed to that. I got it, this may be a compromise, but the evidentiary Record is now totally lacking as to why I should authorize the payment of the $27,000 to them and I want to give the Debtors an opportunity to make that case.

So go ahead and pay the other two ordinary course professionals in accordance with the Order on our oral order on the 20th. We'll take back up whether we ought to authorize the 27 -- excuse me -- I think it was 27,000 or 27,500 -- once there is evidentiary support that hiring a corporate communications firm to do work in a liquidating company post-filing makes sense. I can imagine there are ways when it does and I don't mean to put this -- I don't mean that to be pejorative in that wording, but I don't have any of that in an evidentiary Record right now to allow me to sign it. And the reason I don't is that wasn't the focus of the Motion. It's the focus of what looks like a compromise on the Motion and I don't want to be ruling on that without a good evidentiary record.

That's what I intend to do today. I'm looking at

all the faces on Zoom and I'm by far the oldest person here, so I'm going to give a little bit of advice. I think simultaneously saying someone is acting in bad faith but you're being cooperative and you expect them to be I think is a different world to act in. Let's let people do their jobs. I've got really good professionals. I think everyone here is trying to do their job.

And I would ask that the parties try and tone down the conversation a little bit. The more you tell me somebody is acting inappropriately when they're doing their job the less ground you're gaining with me and I would just suggest from age that you listen to that one comment. If you don't want to, that's okay, it's not an order, but that would be my request.

Is there anything we need to do on the Khoury adversary proceeding today?

MS. SPIGEL: Your Honor, it's Robin Spigel.

May I speak before you turn to the adversary proceeding?

THE COURT: Of course, Ms. Spigel.

MS. SPIGEL: Thank you. Just a couple of things. On the ordinary course professionals Motion, there was -- part of the revised Order is -- another ordinary course professional was hired by the company, Amy Stewart Law Group, which a boutique insurance firm. We've --

THE COURT: You're right.

MS. SPIGEL: I think it's one of the --

THE COURT: You can do all of that. The only part that I don't want to do is to authorize the 27 or 27-5 until I have an evidentiary record to support that. That's the only thing I'm cutting out. You can act on the rest of it.

MS. SPIGEL: In Mr. Fallquist --

THE COURT: And I am not denying that. I want that to be clear. I just don't have a record to do it on.

MS. SPIGEL: Okay. In Mr. Fallquist's declaration in response to the Committee raising the (indiscernible) we did include an evidentiary basis for (indiscernible) in this case. We did -- we actually --

THE COURT: I may have -- can you take me there? Because I may have missed it.

MS. SPIGEL: Yeah. Give me one second if you don't mind.

MR. SPEAKER: I think by agreement with ERCOT, that declaration was not included in the evidence today but I may be wrong.

MS. SPIGEL: It's not the First Day declaration. It's the declaration of Mr. Fallquist in support of the reply.

MR. SPEAKER: Oh, okay. My apologies.

THE COURT: Yeah, let me just find that. That was 218.

MS. SPIGEL: It's (indiscernible).

THE COURT: It was part of 218-2, I think, right?

MS. SPIGEL: I only have (indiscernible) copy. Is (indiscernible) on?

MR. SPEAKER: Yeah, that is -- I think Your Honor is correct that is 218-2.

MS. SPIGEL: Okay.

THE COURT: So tell me where I would find the evidentiary support on the 27,000.

MR. SPEAKER: It's on page 6 of the chart that's behind Mr. Fallquist's declaration I believe.

THE COURT: Okay.

MR. SPEAKER: Actually 697.

THE COURT: So this talks about 11,000. Am I remembering the Order wrong with 27,000 in it?

MR. SPEAKER: That's actually --

MS. SPIGEL: Go ahead, Trey.

MR. SPEAKER: Yeah. The 11,000 reflects net of a retainer. They have about a $60,000 retainer remaining from prior to the case.

THE COURT: Got it. I'm going to withdraw my comments and I'm going to go ahead and approve the Order.

It's agreed to and I will sign that Order. I had missed that part of it and I think that is a valid basis. In essence, I'm going to interpret that to say that there's a lot of litigation coming and you want people to have adequate information before they decide to litigate. Seems fair, the parties agreed to it. I'm not going to intervene in that and I will sign the Order.

Thank you for clarifying that for me, Ms. Spigel. I just -- I had missed that trying to read a lot of stuff getting ready for the hearing. That was filed as --

MR. SPEAKER: Judge, I believe it's 219-1 is the proposed Order.

THE COURT: Is it 219-1 or 219 -- yeah, 219-1. Let me get that done right now.

MS. SPIGEL: Your Honor, may I say one more thing?

THE COURT: Of course.

MS. SPIGEL: Thank you. It's around (indiscernible). We obviously think that (indiscernible) concern then is to -- for the (indiscernible) approval of the Disclosure Statement. We would I guess respectfully request that either it be shortened or that we have the ability to come back to Your Honor on an emergency basis. I'm very worried about this case being administratively insolvent and I just -- I'm just worried about it being

administratively insolvent and I do think that three weeks' worth of discovery on various parties, even if the non-debtor parties are not paying -- they're paying for the Committee and other -- there's other constituents that are now coming out like (indiscernible) for example and I'm just worried about the case becoming administratively insolvent. So I just want to reserve the right to come back on a shortened notice period to try to figure out if we can do this quicker.

THE COURT: Yeah. Look I'm not going to take away from the right to come back on an expedited basis or on an emergency basis. I think whenever you think that's appropriate, I need to trust your judgment and then read what you have to say. I may not agree with it, but I should trust that it's filed in good faith.

I very much believe in the committee process and that becomes heightened in a case where your concerns are that their constituency is going to less if they get to do what they want to do and it doesn't hurt anybody else. You will have an uphill battle telling me that they're not going to cause the Estate to run out of money, which is going to mean their constituents aren't going to get paid anything, and there's no other adverse effect to the delay and that's marginally what I'm hearing is: we might have to convert to a 7, which hurts the unsecureds. It doesn't hurt anybody

else. They're going to get paid less because the money's going to get devoted to professional fees. Hurts their county, no one else. And the committee system is designed by Congress to serve the interest of that constituency.

Now I think if you look at Marvin Isgur's record, I am pretty far from a committee rubber stamp. I think I turn down lots of things that committees asked me to do, but I think that the process is terribly important and it's rare that I don't give them an opportunity to go through the process. That's why I'm doing what I'm doing.

I'm telling you that so that when you consider whether it's worth your time to file that, you understand the perspective that I am coming from. I said I think almost on day one of the case but if no, like on day three or four of the case -- Mr. Gibbs wasn't here yet -- that I think customers who probably have no claim against Griddy and who getting released should probably be pretty happy with that.

And so I don't know that I'm even agreeing to where he's going in the case. That's now what you ought to be hearing on this. What you ought to be hearing is I think he gets -- and don't I don't mean to steal is words -- he gets to do his job and it's very important to me that he gets to do his job. I'm making him move faster than he wants.

But you are certainly free and I respect what you're doing. If you need me to reconsider what I've done, I'll let you deal with it. And no question that you ought to do that if you think you have to.

MS. SPIGEL: Thank you, Your Honor. And one final comment then I'll let to the adversary proceeding so thank you. This is in response to the Disclosure Statement and then putting aside with the Committee comes out and if we put something in the Disclosure Statement not related to that. Is the only other issue that Your Honor is raising is related to the debtor release and putting in the information related to the benefit to the Estate or were there other issues? I just want to make sure that when we come back that we have it properly addressed if there are other things that --

THE COURT: That was the 600-pound gorilla for me and I don't know if there was some of the more "picky" comments and I hope nobody takes offense to that word but, yeah, it should be fixed. I did not have a chance with the latest version that you filed, which I think was filed late yesterday, to compare word for word to see, but I looked at that big issue and thought that we -- the big complaint that you're getting in the case is: you're doing a lot of stuff for a lot of people and we can't really tell that that's the best thing to do. There may be other minor issues, but

there will be nothing else that we wouldn't be able to resolve on that day. I'll sit here and type words in if I have to.

MS. SPIGEL: Okay.

THE COURT: If anybody thinks I'm missing some big issue, please speak up. The big issue to me was the one that I've identified.

(No audible response.)

THE COURT: Okay. Thank you.

MS. SPIGEL: Thank you, Your Honor.

THE COURT: Thank you. I do have somebody that does want to speak up and let me let them do that.

Mr. Jordan, good morning.

MR. JORDAN: Your Honor, this is Shelby Jordan. I think you just unmuted my line. Is that -- can you hear me?

THE COURT: I did and I said, "Good morning," to you.

MR. JORDAN: Okay. I didn't hear that. Thank you very much, Judge. Very quick comments. We had filed at Docket No. 5 -- I'm sorry -- Docket No. 227 our Motion to lift the abatement order. This has been a scramble in my world, not yours, to deal with what the accommodation you made to us with respect to the tort claimant's claims and the nature (indiscernible) of the extent. We've addressed

that in Docket No. 227, but it was on file yesterday because we had to file -- because I wanted to be certain my objections to the Disclosure Statement didn't violate that Order. And so I wanted it on file so the Court knew that we were scrambling as best we could to get not only the Court's questions answered, but to then assert our objections.

And I would simply ask this that the real direction of our objections -- I hope to be heard on May 20 after the Court has had a fair opportunity to digest the tort claimants' position as to why their claims are good. What I have been so concerned about over the last 10 days is that the Court's posture and position on the Griddy claims though fairly understood -- I mean, I understand exactly what the Court asked for. I understand that we did not furnish that to the Court and were not ready to do that when you asked it so it's our problem. We tried to put that problem back in your court so you can either get comfort with it or --

THE COURT: I'll set that for hearing on the 20th at 10:00 o'clock with the other things, sure. I do want you --

MR. JORDAN: All right. In the --

THE COURT: You need to be prepared to address another issue though, which is --

MR. JORDAN: All right.

THE COURT: -- I read it pretty quickly last night. I have focused on what you wrote. I don't know how you have standing to worry about people who owed your clients. Your clients --

MR. JORDAN: Well, I will address these, sir.

THE COURT: Yeah. You clients had notice, your clients have filed proofs of claim, your clients can do what they want and I don't know why you have standing to worry about other potential tort claimants out there that you don't represent. And so on the 20th, you'll need to deal with that. You don't need to deal with it right now.

MR. JORDAN: All right. We'll address that in connection with also the request for the tort committee that we had initially pursed with, but we'll address that, Judge, and address the issue -- the other issue that is (indiscernible) biggest cocaine is there's a massive hole in the assets of this Debtor that's nobody discussing because of the nature of this claim. There is insurance. There's TGL insurance that pays the proceeds typically paid. The Fifth Circuit's made clear that the Debtor now has interest in those proceeds and has an obligation to deal with those proceeds where before the insurance carriers would ignore the Debtor and those proceeds. That's the not the law anymore.

And our problem is that when we discuss what our

tort claims are, I know that the Court's observations weren't -- you're not denied our claim. I mean, we're not -- we realize we're not in the claims allowance process, but it's being treated that way and that's the thing that I want to express to the Court that there's -- if you just word search the Second Amended Plan and Disclosure Statement the word "tort" comes up three times. And it's two times in releases that they propose. They want releases from torts. But it also comes up in one section where it says "and other torts." That's it.

There's no -- they reference that all insurance is going to be preserved. (Indiscernible) about the nature of the insurance, the type of insurance, what it would cover, does it cover tort claims? And so that has been our dilemma of getting our word to the Court under the terms of the type of objection we have, which we will argue and deal with on the 20th and so I'm not trying to do it here.

But I just want to point out to the Court that there is a complete set of assets that are -- that whose policy belongs to the Debtor and who the Debtor now has under the *OGA* (phonetic) Fifth Circuit case a cognizable interest that it should be exercising its fiduciary obligations to, for instance, tell the insurance companies that there are tort claims. Now we can't do that now because those policies belong to the Debtor. The automatic

stay probably prevents us from notifying the insurance companies that we have claims.

And so my concern is that those queues have been -- there's not addressed anywhere in any disclosure, there's no discussion of even tort claims in any disclosure and those are the times -- those are the concerns of time limits that are running with respect to the tort claims. We'll address all that then on the 20th.

THE COURT: Thank you, Mr. Jordan. I will say you certainly asserted tort claims whether they are valid or not valid and I would be really surprised if insurance companies hadn't been notified about that, but I'll let you talk to the Debtors to see. You've asserted claims. They may be ridiculous and they may be fantastic, but you've asserted them and I would be pretty surprised if people didn't notify their insurance. We'll do with that on the 20th.

Let's me on now to the adversary --

MS. SPIGEL: Your Honor?

THE COURT: I'm sorry, go ahead.

MS. SPIGEL: I'm sorry, Your Honor. I just heard Mr. Jordan say a couple of things and I just need clarity. So on the 20th, he mentioned a motion for a tort committee.

Did I misunderstand that?

THE COURT: He had originally asked --

MR. JORDAN: May I speak --

THE COURT: -- for a separate committee --

MS. SPIGEL: Okay.

THE COURT: -- and at the hearing that we had probably three weeks ago, I said I didn't even understand how they had tort claims because you all didn't do --

MS. SPIGEL: Understood.

THE COURT: -- you had no authority to do it. I didn't deny it and he had the right to bring it back up again. He's bringing it back up.

MR. JORDAN: Actually, Your Honor, I didn't bring it back up. I'm sorry to interrupt. I did bring it back up with the idea that it will be heard on the 20th. We probably are not going to ask it be heard on the 20th. In fact let me just say unless that change -- unless something changes drastically based on what the Committee and the Debtors do, we're not going to ask for it be heard on the 20th.

THE COURT: Okay. Thank you.

MS. SPIGEL: Thank you for clarification.

THE COURT: Mr. Potts? Let me go ahead and activate Mr. Potts' line.

What are we doing in the adversary proceeding, Mr. Potts?

MR. POTTS: Hi, Judge. Can you hear me?

THE COURT: I can you find. Good afternoon -- or good morning.

MR. POTTS: Good morning. We're working really closely with the Committee and we filed a stipulation with the Debtor on March 31st and I think we're asking the Court today to just extend that, reserving all rights, reserving our ability to reopen that litigation at a time we deem beneficial, but at this time, I think we're in agreement with the Debtor that things should stay as they are.

THE COURT: Let me ask you and the Debtor this: if we make a docket entry that says, "This adversary proceeding is abated. Any party-in-interest may move to terminate the abatement at any time," is that what you're asking me to do?

MR. JORDAN: Yes, Your Honor.

THE COURT: Any complaint about that, Ms. Spigel, or whoever's going to take the lead on that for you?

MR. LAWRENCE: Your Honor, John Lawrence. I'll take that on behalf of the Debtor. We agree with that, with Mr. Potts said and what Your Honor suggested as the solution.

THE COURT: We'll do that. We'll make that docket entry and we'll no other action in the adversary proceeding.

MR. POTTS: Thank you, Your Honor.

THE COURT: We'll see you all on the 20th maybe earlier if a motion gets filed. I'm not going to set another hearing right now. I will tell you all that I'm here all month so between now and the 20th, you can get my attention pretty easily and I'll be in Chambers every day, but expect to see you on the 20th.

And, Mr. Gibbs, you should get in gear.

MR. GIBBS: Thank you, Judge.

THE COURT: Thank you. We are in adjournment.

(The parties thank the Court.)

(Hearing adjourned at 10:38 a.m.)

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I certify that the foregoing is a correct transcript to the best of my ability due to the condition of the electronic sound recording of the ZOOM/telephonic proceedings in the above-entitled matter.

/S/ MARY D. HENRY

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JTT TRANSCRIPT #63882

DATE FILED: APRIL 30, 2021